**MEMORANDUM ON THE BILL FOR AN ACT TO MAKE PROVISIONS FOR THE PREVENTION OF HIV DISCRIMINATION AND TO PROTECT THE HUMAN RIGHTS AND DIGNITY OF PEOPLE LIVING WITH AND AFFECTED BY HIV AND AIDS AND OTHER RELATED MATTERS.**

Nigerian youths aged 10-24 years account for one-third of the population, and 60% of new HIV infections. Additionally, the HIV prevalence is highest among young people aged 15-30 years old. These statistics clearly illustrate that young people are the most infected and affected portion of the population. As such, young people are in the forefront of persons facing stigma and discrimination not only in workplaces but in educational institutions as well. They are constantly being deprived their right to education, employment, health and other social services. In light of this, it is essential for any policy on stigma and discrimination to fully address the issues of young people living with and affected by HIV and AIDS.

The HIV/AIDS Anti-Discrimination Bill 2013 address some of the key discriminatory situations faced by people living with HIV/AIDS including access to medical services, employment, comparable wages and other working environments, hate messages, and compulsory testing as a requirement for employment. The Bills clearly cite the penalties that will be given to any person or institutional entity that violates any part of the bills. These are all strengths of the bill; however the bill inadequately addresses the issues of young people, especially since they are the most affected segments of the population.

Beyond the fact that young people are most affected by the epidemic, there are documented cases of young people’s human rights being violated on the basis of their HIV status. Frederick Adeboye, a student of Nigerian Institute of Journalism (NIJ) Lagos, was rusticated from school because he tested positive to HIV. Gloria Asuquo was forced to take an HIV test as part of admission requirements for Madonna University and was also denied admission in 2008 due to her HIV status. Even though these are two examples, many of these cases go undocumented, unreported and unchallenged on a daily basis.

Educations as a Vaccine and young people in Nigeria, congratulate the Chairman of the Senate Committee and the entire Committee members for the bold commitment to addressing the issue of HIV stigma and discrimination through the development of the Bill. We also thank the Committee for creating an opportunity, through this public hearing, for young people to make their contributions to policies and laws that affect their lives.

Young people have review the proposed bill and would like highlight some issues of concerns and also make concrete suggestions for improvement of the bill to ensure that every individual’s, including young people; human rights are protected under the law.

**SECTIONS AND SUB-SECTIONS OF CONCERN AND RECOMMENDATIONS.**

1. **The bill presently doesn’t make any specific references to young people.** UNAIDS report that 60% of people infected by HIV and AIDS are young people. In addition, young people face double layer of discrimination on the basis of their age as well as their HIV status. When young people, especially between ages of 18-24 years access HIV testing willingly, healthcare workers disclose their HIV status against their will to parents and caregivers, going against national guidelines for provision of HIV counseling and testing. Young Nigerians are subjected to mandatory HIV testing as part of medical screening practices in **ALL** tertiary institutions. And when a young person is tested positive, the results are not shared with the individual but given to the school authorities for further action, which usually results in termination of their academic pursuits. Bearing these facts in mind, it is critical for any law on HIV and AIDS to explicitly make reference to young people. **We propose to have a clause dedicated to the issues of young people.**
2. **Naming of entities that perpetuate or are responsible for preventing discrimination in the bill should include educational institutions**. **Part II, section 2, subsection (2),** clearly spells out entities that are responsible for preventing the occurrence of discrimination on the basis of HIV status. The section states: *“Individual, communities, employers and employees have a mutual responsibility to prevent discrimination on the basis of HIV and AIDS in the society”.* A school cannot be categorized as an individual, community, employer or employee when it comes to young people. Given the fact that majority of children and young people are found within educational institutions, the sub-section of the bill quoted above doesn’t adequately capture this entity. This observation is also applicable to **Part II, Section 3, subsection 1; Part II, Section 4 subsection (1) and Part II, Section 8, subsection (1). We propose that the word schools, educational institutions or institution be included in the cited sections to rectify this observed gap. Specifically, anywhere in the bill where references are made to entities should state “*individual, communities, institutions, including education and health institutions, employer and employee…”.***
3. **Qualifying example of practices that exposes a person to risk of HIV infection creates room for misinterpretation. Section 2, subsection (3)** states: *“No culture, practice or tradition shall encourage* ***documented*** *practices that expose people to the risk of HIV infection”.* The inclusion of the word “documented” in qualifying the practices, creates room for misinterpretation. Just because an action or practice is not documented doesn’t mean it should not be considered as an infraction under this bill.  **We propose that the word “documented” be expunged from the sub-section, to accommodate undocumented practices.**
4. **Definition of discrimination setting must include educational settings. Part II, Section 3, subsection 1** states: *“Every individual, community, employer shall take steps to protect human right of people living with and affected by HIV and AIDS by eliminating HIV and AIDS-based discrimination in all settings* ***including employment policies and or practices”***. Identification of employment settings alone in this subsection limits the opportunities for holding schools accountable for discrimination within education institutions, where majority of young people can be found. **We recommend that the clause should include the word schools, educational institutions or institution in the cited sections to rectify this observed gap. Specifically, the last line of that clause should read: “…eliminating HIV and AIDS based discrimination in all settings including employment, health and educational institution’s policies and practices.”**
5. **Women’s rights, especially the rights of girls and women living with HIV and AIDS are inadequately captured in the bill.** Although the bill makes a reference to women in **Part II, Section 6, Sub-section 2**; this reference inadequately captures the violation of women and girls human rights within the context of HIV and AIDS. As part of public health effort to address the epidemic, women are routinely screened for HIV as part of maternal health care services. This practice doesn’t require consent of pregnant women and therefore provide healthcare workers with a justification for perpetuating human rights violations. There have been numerous cases of women’s HIV status being disclosed to their spouse and families against her consent. Also when a pregnant woman is tested positive, health care workers apply different safety practices that can indirectly disclose their status to other people within the health care setting. These actions, within the healthcare setting, places women at risk for violence within their homes and communities. In addition, HIV positive women are placed on family planning and in some cases forcefully sterilize as a strategy for reducing mother to child transmission. These human right violations need to be acknowledged and condemned in this bill. **We propose to have a clause dedicated to the issues of women and girls.**
6. **Recognition of the gender dynamics in HIV and AIDS discrimination should also incorporate the age dimension. Part II Section 6, sub**-**section 2** states: *“In the determination of what is "reasonable accommodation", relevant authorities shall be mindful of the gender dimensions of social roles in particular, the burden of care placed on women in society”.* Several studies have shown that girls in addition to women bear the burden of care for HIV and AIDS and should be recognized in this section. **We propose that the issues of age be incorporated into this section. Specifically, we request for this section be rephrased as *“In the determination of what is "reasonable accommodation", relevant authorities shall be mindful of the gender and age dimensions of social roles in particular, the burden of care placed on women and girls in society*”.**
7. **Public and privately delivered services must be explicitly defined to include education services.** **Part II, Section 7** states: *“Prior to accessing any* ***public/privately delivered services****, employment and any other opportunities, no individual or bodies shall require a person to disclose his or her HIV status…”* It is not presently clear if education is included under the categorization of public/privately delivered services. There is the possibility that education might not be perceived as a service and thereby create a missed opportunity for addressing the request for potential and existing learners to disclose their HIV status to school administration. This issue also applies to **Part II, section 8, subsection (1)**. **We propose that public/privately services be defined in the interpretation section to include education services or education services be included in the clause directly. Specifically we suggest the clause be rephrased as “*Prior to accessing any public/privately delivered services including education, employment and any other opportunities, no individual or bodies shall require a person to disclose his or her HIV status…”***
8. **Section 8 on HIV testing doesn’t adequate capture the issues of mandatory testing in schools.** Section 8, which is supposed to deal with all issues relating to HIV testing doesn’t explicitly address the issue of schools requiring HIV testing as part of its routine medical screening procedures for new enrollees. Although **Part II, section 8, subsection (1)** does state: “*No employer, institution, bodies or individual shall require an HIV test as a precondition to the offer of employment, access to public/private services and opportunities except where it is shown, on the certification of two competent medical authorities to the court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others*”, the clause is not adequate. The inclusion of the phrase “…*except where it is shown, on the certification of two competent medical authorities to the court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others”* limits this section, as it provides a justification for educational institutions to use the phrase to continue to enforce mandatory testing. Medically, there is no evidence that show that a young person living with HIV and AIDS present a “danger” to other students or employees of a school. So on this basis, **we are recommending that a separate section be included to address the issues of mandatory testing in schools. Specifically we propose the following text for inclusion: *“No educational institution shall require HIV testing as part of its routine medical testing requirements for accreditation of learners”* as a continuation of sub-section (1).**
9. **Specification in Section 8, sub-section 4 is conflicting and creates room for misinterpretation. The clause states: “***Nothing in sub-section 1 of this section shall prevent the medical testing of persons for fitness for work and any other responsibility as a precondition for the offer of employment and any other responsibility as provided in any existing law*”. This clause appears to contradict the conditions set in section 1. It is acceptable to state that the conditions set in section doesn’t limit institutions from conducting routine medical testing for determination of fitness capabilities, **it is critical that HIV testing is not included as part of “fitness” test.** A person’s HIV status doesn’t necessarily always limit their ability to engage in physically strenuous activities or their fitness abilities. Inclusion of HIV testing as part of fitness examination would only introduce opportunities for institutions to further perpetuate acts of discrimination, which this proposed law is trying to prevent. **It is on this basis, we are requesting that the entire sub-section (4) be expunged or be amended to state “*Nothing in sub-section 1 of this section shall prevent the medical testing, excluding HIV testing, of persons for fitness for work and any other responsibility as a precondition for the offer of employment and any other responsibility as provided in any existing law”*.**

This submission is made **by Education as a Vaccine** (EVA) in consultation with young people across Nigeria. EVA envisions a Nigeria where children and young people reach their full potentials and works to build and implement innovative and sustainable mechanism for improved quality of life for vulnerable children and young people. Using child and youth friendly approaches the organization strengthens the capacities of children, young people and other stakeholders to facilitate and sustain social change in the area of health, protection and education through integrated programming.

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